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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 OAKLAND DIVISION

10 JUST FILM, INC.; et al.

11 Plaintiffs,

12 v.

13
14 MERCHANT SERVICES, INC.; et al.,

15 Defendants.

CASE NO. 10-CV-01993-CW

ORDER GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND JUDGMENT

DATE: December 12, 2013
JUDGE: Hon. Claudia Wilken
CTRM: 2, 4th Floor

1 Plaintiffs Rainbow Business Solutions, d/b/a/ Precision Tune Auto Care; Dietz Towing,
2 Inc.; Volker Von Glasenapp; Jerry Su, Verena Baumgartner d/b/a Burlingame Motors; and Terry
3 Jordan (“Plaintiffs” or “Class Representatives”); Defendants Merchant Services, Inc.; National
4 Payment Processing, Inc.; Universal Merchant Services LLC; Universal Card, Inc.; Jason Moore;
5 Nathan Jurczyk; Robert Parisi; Eric Madura; and Alicyn Roy (“Merchant Services Defendants”)
6 and Defendant Fiona Walshe have moved the Court for final approval of a proposed class action
7 settlement, the terms and conditions of which are set forth in the Amended Settlement Agreement
8 filed with the Court on June 6, 2013 (Dkt.# 519) as amended in the Stipulation Regarding
9 Amended Settlement (“Stipulation”) (“Settlement Agreement”), and filed with the Court on
10 December 9, 2013 (Dkt. # 572).

11 Having considered all matters submitted to it at the hearing on the motion the and
12 otherwise, including the complete record of this action, and good cause appearing therefore, the
13 Court hereby finds and concludes as follows:

14 1. The capitalized terms used in this Final Approval Order and Judgment shall have the
15 same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

16 2. The Court has jurisdiction over this case and over all claims raised therein and all
17 Parties thereto.

18 3. The Court finds that the prerequisites of Federal Rule of Civil Procedure 23(a) and
19 (b)(3) have been satisfied for certification of the Settlement Class for settlement purposes
20 because: Settlement Class Members are ascertainable and are so numerous that joinder of all
21 members is impracticable; there are questions of law and fact common to the Settlement Class;
22 the claims and defenses of the Class Representatives are typical of the claims and defenses of the
23 Settlement Class they represent; the Class Representatives have fairly and adequately protected
24 the interests of the Settlement Class with regard to the claims of the Settlement Class they
25 represent; the common questions of law and fact predominate over questions affecting only
26 individual Settlement Class Members, rendering the Settlement Class sufficiently cohesive to
27 warrant a class settlement; and the certification of the Settlement Class is superior to individual
28 litigation and/or settlement as a method for the fair and efficient resolution of this matter.

1 4. For purposes of the Settlement and this Final Approval Order and Judgment, the
2 Court hereby finally certifies the following Settlement Class: all persons who, between March 26,
3 2006 and March 20, 2013, entered into an agreement for bankcard processing services and an
4 associated lease for bankcard processing equipment through one or more of the Merchant
5 Services Defendants, except for (1) all persons who remained in a bankcard processing agreement
6 through any of the Merchant Services Defendants for more than sixty (60) days after the
7 expiration of their initial processing agreement; (2) all persons who continued to lease bankcard
8 processing equipment through any of the Merchant Services Defendants for more than sixty (60)
9 days after the expiration of their initial equipment lease; (3) the Honorable Judge Claudia Wilken
10 and any member of her immediate family; (4) Antonio Piazza and any member of his immediate
11 family; (5) any government entity; (6) any of the Released Parties; and/or (7) any persons who
12 timely opt out of the Settlement.

13 5. For the purpose of this Settlement, the Court hereby finally certifies Plaintiffs
14 Rainbow Business Solutions, d/b/a/ Precision Tune Auto Care; Dietz Towing, Inc.; Volker Von
15 Glasenapp; Jerry Su, Verena Baumgartner d/b/a Burlingame Motors; and Terry Jordan as Class
16 Representatives, and Gutride Safier LLP as Class Counsel.

17 6. The Parties complied in all material respects with the Notice Plan set forth in the
18 Settlement Agreement. The Court finds that the Notice Plan set forth in section IV of the
19 Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constituted the
20 best notice practicable under the circumstances and constituted due and sufficient notice to the
21 Settlement Class of the pendency of the Litigation; the existence and terms of the Settlement
22 Agreement; their rights to make claims, opt out, or object; and the matters to be decided at the
23 Final Approval Hearing. Further, the Notice Plan satisfies the Federal Rules of Civil Procedure,
24 the United States Constitution, and any other applicable law including Rule 23 of the Federal
25 Rules of Civil Procedure and the Class Action Fairness Act of 2005, 28 U.S.C. § 1715. Merchant
26 Services Defendants provided notice of the Settlement to the appropriate state and federal
27 government officials and filed with the Court proof of compliance with the Class Action Fairness
28 Act of 2005, 28 U.S.C. § 1715 (“CAFA Notice”).

1 7. The Court has determined that full opportunity has been given to the members of the
2 Settlement Class, and federal and state officials, to opt out of the Settlement, object to the terms
3 of the Settlement or to Class Counsel's request for attorneys' fees and expenses and incentive
4 awards, and otherwise participate in the Final Approval Hearing held on November 21, 2013.
5 The Court did not receive any submissions and arguments objecting to the Settlement. The Court
6 has considered all issues raised at the final approval hearing, as well as the Parties' responses to
7 those issues, including the Stipulation, and has determined, for all the reasons set forth in the
8 Parties' responses, that nothing merits or warrants disapproval of the Settlement Agreement.

9 8. The Court finds that the Settlement is in all respects fair, reasonable and adequate.
10 The Court therefore finally approves the Settlement for all the reasons set forth in the Motion for
11 Final Approval, and supplemental briefs and declarations filed in support thereof (Dkts. # 555,
12 556, 564, 565, 573, 574) including, but not limited to, the fact that the Settlement Agreement as
13 amended by the Stipulation was the product of informed, arms-length negotiations between
14 competent, able counsel and conducted with the oversight and involvement of an independent,
15 well respected, and experienced mediator; the record was sufficiently developed and complete
16 through meaningful discovery and motion proceedings to have enabled counsel for the Parties to
17 have adequately evaluated and considered the strengths and weaknesses of their respective
18 positions; the Litigation involved disputed claims, and this dispute underscores the uncertainty
19 and risks of the outcome in this matter; the Settlement provides meaningful remedial and
20 monetary benefits for the disputed claims; the cy pres component serves the interests of class
21 members and furthers the goals of the litigation; and the Parties were represented by highly
22 qualified counsel who, throughout this case, vigorously and adequately represented their
23 respective parties' interests.

24 9. The Settlement is in the best interests of the Settlement Class in light of the degree of
25 recovery obtained in relation to the risks faced by the Settlement Class in litigating the Class
26 Claims. The relief provided to the settling Class Members under the Settlement Agreement is
27 appropriate as to the individual members of the settling Class and to the Class as a whole. The cy
28 pres recipients, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area to

1 benefit the Legal Services for Entrepreneurs program, Start Small Think Big, Inc. in New York
2 City, and the National Consumers League in Washington, DC, will advance the goals of this
3 lawsuit and the needs of the small business class. There is a geographic nexus between the
4 organizations receiving the funds and the nationwide class. Notice to the class of the cy pres
5 component is not required due to the fact that the donation is being made from funds unclaimed
6 by class members, and notice thereof would not have a material impact on the claim rate. All
7 requirements of statute, rule, and Constitution necessary to effectuate the Settlement have been
8 met and satisfied. The Parties shall effectuate the Settlement Agreement in accordance with its
9 terms.

10 10. By operation of this Final Approval Order and Judgment, Plaintiffs on the one hand,
11 and the Released Parties (defined below) on the other hand, shall have unconditionally,
12 completely, and irrevocably released and discharged released and forever discharged each other
13 from and shall be forever barred from instituting, maintaining, or prosecuting any and all claims,
14 liens, demands, actions, causes of action, obligations, damages or liabilities of any nature
15 whatsoever, whether legal or equitable or otherwise, known or unknown, that actually were, or
16 could have been, asserted in the Litigation, based upon any violation of any state or federal
17 statutory or common law or regulation, and any claim arising directly or indirectly out of, or in
18 any way relating to, the claims that actually were, or could have been, asserted in the Litigation,
19 that Plaintiffs on the one hand, and Merchant Services Defendants and Fiona Walshe on the other
20 hand, have had in the past, or now have, related in any manner to the Released Parties' products,
21 services or business affairs, and any and all other claims, liens, demands, actions, causes of
22 action, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or
23 otherwise, known or unknown, that Plaintiff on the one hand, and Merchant Services Defendants
24 and Fiona Walshe on the other hand, have had in the past or now have, related in any manner to
25 any and all Released Parties' products, services or business affairs, or otherwise.

26 11. By operation of this Final Approval Order and Judgment, Settlement Class Members
27 shall have unconditionally, completely, and irrevocably released and discharged the Released
28 Parties from any and all claims, rights, demands, actions, causes of action, suits, debts, liens,

1 contracts, liabilities, agreements, costs, expenses, or losses of any kind whatsoever, including any
2 known or unknown claims, which Plaintiffs or Class Members that actually were, or could have
3 been, asserted in the Litigation that relate to the facts alleged in the Complaint.

4 12. "Released Parties" means each of the Merchant Services Defendants; all of Merchant
5 Services Defendants' past and present officers, directors, parents, subsidiaries, successors,
6 predecessors, assigns, and legal representatives; and Fiona Walshe. Even if they would otherwise
7 be included in the above definition, "Released Parties" shall exclude Northern Leasing Systems,
8 Inc.; MBF Leasing LLC; Northern Funding LLC; Golden Eagle Leasing LLC; Lease Source –
9 LSI, LLC; Lease Finance Group, LLC; Jay Cohen; Leonard Mezei; Sara Krieger; Brian
10 Fitzgerald; Sam Buono; MBF Merchant Capital, LLC; RBL Capital Group, LLC; William Healy;
11 Joseph I. Sussman; Joseph I. Sussman, P.C.; SKS Associates, LLC; Pushpin Holdings, LLC;
12 Cucumber Holdings, LLC; TransFirst Holdings, Inc.; TransFirst, LLC; TransFirst Third Party
13 Sales, LLC; Columbus Bank And Trust Co.; Fifth Third Bank; Merrick Bank; and all of their past
14 and present officers, directors, parents, subsidiaries, successors, predecessors, assigns and legal
15 representatives.

16 13. Plaintiffs and Settlement Class Members shall, by operation of this Final Approval
17 Order and Judgment, be deemed to have waived the provisions, rights and benefits of California
18 Civil Code § 1542, and any similar law of any state or territory of the United States or principle
19 of common law. Section 1542 provides:

20 A general release does not extend to claims which the creditor does not know or suspect to
21 exist in his or her favor at the time of executing the release, which if known by him or her
22 must have materially affected his or her settlement with the debtor.

23 14. Nothing herein shall bar any action or claim to enforce the terms of the Settlement
24 Agreement.

25 15. No action taken by the Parties, either previously or in connection with the
26 negotiations or proceedings connected with the Settlement Agreement, shall be deemed or
27 construed to be an admission of the truth or falsity of any claims or defenses heretofore made or
28 an acknowledgment or admission by any Party of any fault, liability or wrongdoing of any kind

1 whatsoever to any other Party. Neither the Settlement Agreement nor any act performed or
 2 document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be
 3 or may be used as an admission of, or evidence of, the validity of any claim made by the
 4 Settlement Class Members or Class Counsel, or of any wrongdoing or liability of the persons or
 5 entities released under this Agreement, or (b) is or may be deemed to be or may be used as an
 6 admission of, or evidence of, any fault or omission of any of the persons or entities released under
 7 this Agreement, in any proceeding in any court, administrative agency, or other tribunal.
 8 Merchant Services Defendants' and Fiona Walshe's agreement not to oppose the entry of this
 9 Final Approval Order shall not be construed as an admission or concession by Merchant Services
 10 Defendants or Fiona Walshe that class certification was appropriate in the Litigation or would be
 11 appropriate in any other action.

12 16. For the reasons stated in the separate Order on Class Counsel's Application for an
 13 award of attorneys' fees and costs and incentives, Merchant Services Defendants and Fiona
 14 Walshe shall pay Class Counsel \$923,000 in fees and expenses and shall pay incentive awards as
 15 follows:

16 Jerry Su and Rainbow Business Solutions, d/b/a/ Precision Tune Auto Care,
 17 collectively: \$7,500

18 Terry Jordan and Dietz Towing, Inc., collectively: \$7,500

19 Volker Von Glasenapp \$7,500

20 Verena Baumgartner d/b/a Burlingame Motors \$7,500

21 Such amounts shall be paid according to the terms of the Settlement Agreement.

22 17. Except as provided in this Order, Plaintiffs shall take nothing against Merchant
 23 Services Defendants or Fiona Walshe by their Complaint, and final judgment shall be entered
 24 thereon, as set forth in this Order.

25 18. Without affecting the finality of the judgment hereby entered, the Court reserves
 26 jurisdiction over the implementation of the Settlement Agreement.

27 19. Without further order of the Court, the parties may agree to reasonable extensions of
 28 time to carry out any provisions of the Settlement Agreement.

